IN THE HIGH COURT OF DELHI

MAC.APP.No.10/2004

Smt. Shanti Devi & Ors. ..... Appellants
! through: Ms. Mukta Joshi, Advocate

VERSUS

$ Sh. Suresh Kumar & Anr. ..... Respondent
^ through: None.

RESERVED ON: 03.08.2007

% DATE OF DECISION: 06.08.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. It is rather unfortunate that the appellants did not implead as respondents the driver of the two wheeler scooter bearing No. DNE-3788 nor the insurance company with whom the scooter was insured. My reason for so holding is that I concur with the award wherein it has been held that the deceased, Babu Lal, a pillion rider on the scooter being driven by its owner, Sunil Kumar, did not die due to any rash act committed by the driver of the DTC bus. The evidence on

record establishes that Sunil Kumar was wholly responsible for the tragic death of Babu Lal.

2. It is not in dispute that on 8.4.1992 there was a collision between the scooter driven by Sunil Kumar and DTC bus bearing No.DEP-9672 at the crossing of Andrews Ganj when both vehicles were on ring road.

3. Version of the claimants was that Sunil Kumar along with deceased were travelling in the southern direction on Bhisham Pitamah Marg and at the crossing on Andrews Ganj took a left turn and entered ring road. According to them, when the scooter had come on to ring road, the DTC bus rammed into the scooter from behind and crushed Babu Lal.

4. Version of the driver of the DTC bus is that not he, but Sunil Kumar collided with his bus as he crossed the crossing of Andrews Ganj and that after hitting the bus on its left side, the scooter lost balance. The injured suffered fractures due to impact and resultant fall, which proved to be fatal.

5. Sunil Kumar appeared as PW-2 and in his testimony supported the version of the claimants.

6. The driver appeared as RW-1 and stood by his version.

7. No other witness was cited by either party.

8. It is thus a case of word of mouth against word of

mouth.

9. But, I have other evidence to break the impasse.

10. Ex. R-2 is the inspection report of the two wheeler scooter. The damage to the scooter is recorded as under:-

(1) Front headlight cover bent.

(2) Basket broken.

(3) Right side engine cover bent.

11. Ex. R-1 is the mechanical inspection report of the bus. Damage recorded is as under:-

"rear gate – minor damage"

12. Ex. R-1 & R-2 clearly establish that the scooter had hit the bus somewhere near the rear entrance of the bus. Obviously, it has to be the left side of the bus for the reason in India traffic is driven on the left side. Further, the damage to the scooter is on the right side engine cover as also the front handle area. Thus the right side of the scooter hit the left side of the bus.

13. The scooter has not been damaged at the rear side. Thus, the question of the bus hitting the scooter from the rear does not arise.

14. The site plan Ex. PW-7/B evidences that as the scooter took a left turn from Bhisham Pitamah Marg on to ring road it hit the bus towards the rear of the bus near the entry

gate of the bus.

15. Ex. R-1, R-2 and PW-7/B probablize that the scooter driver could not control the scooter when it entered on to ring road.

16. I find further corroborative evidence in the form of MLC of the deceased. Certified copy of the MLC obtained from the Criminal Court, though unexhibited or unproved, is at pages 137-139 of the Trial Court Record.

17. If indeed, deceased was run over by the bus, MLC would have recorded crush injuries. If indeed, deceased was dragged by the bus, there would be extensive lacerated and contusion wounds on the body of the deceased.

18. The injuries recorded in the MLC are as under:-

1. Fracture of pelvic
2. Abrasion about 4cm into 3cm over right shoulder joint
3. Fracture of middle sternum
4. Fracture of dorsal 1/3rd part of right clavicle
5. Fracture of right first, second, and third thoracic ribs

19. All injuries are on the right side of the face, right shoulder and right side of the chest of the deceased.

20. The injuries establish that the deceased was hit with

a blunt object on his right side with the torso of the body taking the impact.

21. This could have only happened if the scooter with its driver and pillion rider hit the bus on its left side. Only in such scenario would the right side of the scooter get damages and the right side of the body of the pillion rider getting injured.

22. Had the owner and the insurance company of the scooter been impleaded as respondents, claimants could have been awarded compensation against them.

23. Unfortunately, nothing can be done to salvage the situation for the appellants.

24. The appeal is dismissed.

25. No costs.

26. LCR be returned.

August 6, 2007
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PRADEEP NANDRAJOG
JUDGE